

**REMARKS**

Claims 1-12 are pending in this application. By this Amendment, claims 1-3 and 7 are amended, and claims 9-12 are added. Support for the amendment to claim 1 can be found, for example, in paragraphs [0026] and [0029], and in original claims 2 and 3. Support for the amendment to claim 2 can be found in the specification, for example, in paragraph [0026]. Support for the amendment to claim 3 and new claim 9 can be found in the specification, for example, in original claim 2. Claim 7 is amended for clarity. Support for new claims 10-12 can be found in original claims 4, 7 and 8, respectively. No new matter is added.

The Office Action rejects claim 7 under 35 U.S.C. §112, second paragraph. Applicant has amended claim 7 to correct minor informalities. Applicant respectfully submits that claim 7 is in compliance with 35 U.S.C. §112, second paragraph. Accordingly, withdrawal of the rejection is respectfully requested.

The Office Action rejects claim 1 under 35 U.S.C. §102(b) over JP 06-288246 A to Makato. The rejection is respectfully traversed.

Applicant respectfully submits that Makato fails to disclose a pressure detecting means for detecting a state of the atmospheric pressure and a variable nozzle mechanism for variably controlling a supercharging state by a turbocharger, wherein when the atmospheric pressure detected by the pressure detecting means becomes more than the predetermined value, the variable nozzle mechanism controls the variable nozzle opening with a feedback control based on a deviation in a intake air mass detected by the intake air mass detecting means and a target intake air mass determined based on an operating state of the internal combustion engine, wherein when the atmospheric pressure detected by the pressure detecting means becomes less than the predetermined value, the variable nozzle mechanism prohibits the variable nozzle opening with the feedback control, based on the deviation between the intake air mass and the targeted intake air mass, and controls the variable nozzle opening with

the targeted variable nozzle opening calculated based on the rotation number and load of the internal combustion engine, as recited in independent claim 1.

Applicant respectfully submits that Makato fails to disclose any element that can reasonably be considered to correspond to the claimed variable nozzle mechanism that variably controls a supercharging state by a turbocharger. Moreover, Makato fails to disclose any element that controls a variable nozzle opening with a feedback control based on a deviation and an intake air mass detected by the intake air mass detecting means and a targeted intake air mass determined based on an operating state of an internal combustion engine. In addition, Makato fails to disclose any element that prohibits a variable nozzle opening with a feedback control, based on a deviation between an intake air mass and a targeted intake air mass, and controls the variable nozzle opening with the targeted variable nozzle opening calculated based on a rotation number and a load of the internal combustion engine, as recited in independent claim 1.

Therefore, for at least the above reasons, independent claim 1 is patentable over Makato. Accordingly, withdrawal of the rejection is respectfully requested.

The Office Action (1) rejects claims 2, 3, 5 and 6 under 35 U.S.C. §103(a) over Makato in view of JP 2002-115553 A to Akira; (2) rejects claims 3 and 8 under 35 U.S.C. §103(a) over Makato in view of JP 2001-336433 A to Atsushi et al. (hereinafter "Atsushi"); and (3) rejects claims 4 and 8 under 35 U.S.C. §103(a) over Makato in view of Atsushi, and further in view of any of U.S. Patent No. 6,141,965 to Woollenweber et al. (hereinafter the "965 patent"), U.S. Patent No. 6,079,211 to Woollenweber et al. (hereinafter "the 211 patent"), and U.S. Patent No. 6,029,452 to Halimi et al. (hereinafter "Halimi"). These rejections are respectfully traversed.

These rejections are premised upon the presumption that Makato discloses all of the features of independent claim 1, from which claims 2-8 depend. As discussed above, Makato

does not disclose all the features of independent claim 1. Thus, claims 2-8 are patentable at least in view of the patentability of independent claim 1, as well as for the additional features these claims recite. In addition, Akira, Atsushi, the '965 Patent, the '211 Patent and Halimi, all fail to remedy the deficiencies of Makato. Accordingly, withdrawal of the rejections is respectfully requested.

In addition, new claims 9-12 also are patentable over the applied references for at least the reasons independent claim 1 is patentable, from which these claims depend, as well as for the additional features these claims recite.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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